

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 38416 of 2023

Applicant :- Inkar Ali

Opposite Party :- State of U.P.

Counsel for Applicant :- Udai Prakash Deo Pandey

Counsel for Opposite Party :- G.A., Abou Sofian Usmani

Hon'ble Samit Gopal,J.

1. List revised.
2. Heard Sri Udai Prakash Deo Pandey, learned counsel for the applicant, Sri Ajay Singh, learned AGA-I for the State and perused the material on record.
3. Sri Brijesh Singh, Advocate (A/B 0214/2017), holding brief of Sri Abou Sofian Usmani, learned counsel for the first informant is also present.
4. The matter was previously taken up on 19.09.2023 on which date Sri Abou Sofian Usmani, Advocate, appearing for the first informant, was not present. His vakalatnama was also not on record and as such the matter was directed to be placed today and office was directed to trace out the said vakalanatma and place it on record. Today, as per office report and the records, vakalatnama of Sri Abou Sofian Usmani is on record. Today, Sri Brijesh Singh, Advocate submits that the matter be adjourned as Sri Abou Sofian Usmani has not come to Court. The request is not accepted as previously on 19.09.2023 there was no appearance of Sri Abou Sofian Usmani or anyone on his behalf despite his name being printed in the cause list due to which hearing and disposal of the matter could not take place. Today again although there is a request for adjournment in the matter on his behalf but looking to the previous order the same is turned down. The Court proceeds to hear the matter.
5. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant- Inkar Ali, seeking enlargement on bail during trial in connection with Case Crime No. 73 of 2023, under Sections 376(2)N, 323, 506 I.P.C. registered at P.S. Duddhi, District Sonbhadra.
6. The F.I.R. of the matter was lodged on 04.7.2023 by the victim herself against the applicant Inkar Ali, Gayasuddin and

Tasleem Ansari, alleging therein that her date of birth is 08.7.2001. Inkar Ali the applicant on false promise to marry since last three years, was establishing physical relationship with her. When she asked him to marry he refused. On 23.5.2023 and 24.5.2023 at about 10.00 p.m. the applicant called her on phone and told her to come to the house of his chacha where she went and he established physical relationship. She then asked him when he would marry her, on which he became annoyed and stated that he would keep her as mistress as he is already married. He assaulted her and threatened her for life. She called the police on dial 112, on which he ran away from the place of occurrence.

7. Learned counsel for the applicant argued that on the own showing of the victim she is major woman. It is argued that relationship was consensual relationship on some discussion of marriage between the victim and the applicant which, as per the victim, did not materialize. It is argued that relationship between the victim and the applicant was since last three years and she was major even at that time. It is argued that the applicant has no other criminal antecedents as stated in para-27 of the affidavit and is in jail since 6.7.2023.

8. Per contra, learned State counsel vehemently opposed the prayer for bail.

9. After having heard learned counsels for the parties and perusing the record, it is evident that on the own showing of the victim she is major woman. There was some discussion of marriage between the victim and the applicant which, as per the victim, could not materialize. The relationship was consensual.

10. Looking to the facts and circumstances of this case, the nature of evidence and also the absence of any convincing material to indicate the possibility of tampering with the evidence, this Court is of the view that the applicant may be enlarged on bail.

11. Let the applicant- Inkar Ali, be released on bail in the aforesaid case crime number on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions which are being imposed in the interest of justice:-

i) The applicant will not tamper with prosecution evidence and will not harm or harass the victim/complainant in any manner whatsoever.

ii) The applicant will abide the orders of court, will attend the

court on every date and will not delay the disposal of trial in any manner whatsoever.

(iii) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the date fixed for evidence when the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law.

(iv) The applicant will not misuse the liberty of bail in any manner whatsoever. In case, the applicant misuses the liberty of bail during trial and in order to secure his presence proclamation under section 82 Cr.P.C., may be issued and if applicant fails to appear before the court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against him, in accordance with law, under section 174-A I.P.C.

(V) The applicant shall remain present, in person, before the trial court on dates fixed for (1) opening of the case, (2) framing of charge and (3) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court absence of the applicant is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of bail and proceed against him in accordance with law and the trial court may proceed against him under Section 229-A IPC.

(vi) The trial court may make all possible efforts/endeavour and try to conclude the trial expeditiously after the release of the applicant.

12. The identity, status and residential proof of sureties will be verified by court concerned and in case of breach of any of the conditions mentioned above, court concerned will be at liberty to cancel the bail and send the applicant to prison.

13. The bail application is allowed.

(Samit Gopal,J.)

Order Date :- 17.10.2023

Naresh